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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN P. BLASKO and CHARLES A. ELDERING

Appeal 2009-012212
Application 09/742,527
Technology Center 3600

Before JOHN C. KERINS, KEN B. BARRETT, and MICHAEL C. ASTORINO, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John P. Blasko and Charles A. Eldering (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-21 and 85-113. Claims 22-84 and 114 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

THE INVENTION

Appellants' claimed invention pertains to television advertising, and particularly to managing an inventory of avails, or advertisement spots in a television channel or program. Spec. 1, ll. 13-22. Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A computer-implemented method for managing avail inventory data of media programming streams for a communications network, the method comprising the steps of:
>
> correlating available addressable units of the communications network with an avail inventory; and
>
> generating a proposed price for purchase of at least one avail based on results of the correlating step.

THE REJECTIONS

The following Examiner's rejections are before us for review:

1. Claims 1-4, 6-13, 16-21, and 85-113 are rejected under 35 U.S.C. § 102(e) as being anticipated by Hendricks (US 6,463,585 B1, issued Oct. 8, 2002); and

2. Claims 5, 14, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hendricks and Hunter (US 6,424,998 B2, issued Jul. 23, 2002).

OPINION

The rejection of claims 1-4, 6-13, 16-21, and 85-113 as being anticipated by Hendricks

Claims 1-4, 6-9, 11-13, 16-21, and 87

Appellants argue claims 1-4, 6-9, 11-13, 16-21, and 87 as a group[1]. App. Br. 10, 15 (referring to claim 87). We select claim 1 as the representative claim, and claims 2-4, 6-9, 11-13, 16-21, and 87 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that the Examiner has mistakenly equated Hendricks' advertisements with the claimed "avail" and that Hendricks does not disclose the recited "correlating available addressable units of the communications network with an avail inventory." App. Br. 11-14. These arguments are not persuasive.

The Examiner construed an "avail" as an advertising opportunity or slot. Ans. 3. This is consistent with Appellants' use of the term. *See* Spec. 19-21 (Appellants explaining that an "avail" is an advertisement spot); App. Br. 12 ("It is clear that when using the terms 'avails,' 'advertisement spots,' or 'time slots,' Applicants are referring to the space during which advertisements are placed.")

The Examiner is correct that Hendricks discloses the correlating step. Ans. 3, 7-8. Hendricks describes two types of channels that may be broadcast to targeted television terminals (addressable units) – a program channel and feeder channels. Hendricks, col. 4, ll. 25-53. During program breaks, targeted alternative advertisements that are broadcast on a feeder

[1] Appellants also include claim 27 in the group (App. Br. 10, 15), but that claim has been canceled.

channel may be substituted at the targeted television terminals for the default advertisements on the program channel. *Id.* The program breaks are composed of pods in which targeted advertisements may be aired. *Id.*, col. 5, ll. 33-35. Appellants concede that "[t]he avails in Applicants' application are the equivalent of the 'open spots or pods' from Hendricks." Reply Br. 2. Thus, Hendricks' system is able to place a targeted advertisement in a specific break (an avail in inventory) on targeted terminals (addressable units). This indicates that the system correlated available addressable units to the avail inventory. *See* Ans. 8 (the Examiner finding that, whether direct or indirect, there is a correlation).

Appellants also argue that Hendricks fails to disclose the "generating a proposed price" step, alleging that Hendricks' charged rates "are not for specific avails corresponding to particular addressable units." App. Br. 14. The Examiner is correct that claim 1 does not require the specificity asserted by Appellants. Ans. 8. As the advertisers in Hendricks are charged for the advertisements placed in pods and Hendricks does disclose the correlating step, we agree with the Examiner that a price was generated. Ans. 3-4.

We sustain the rejection of claims 1-4, 6-9, 11-13, 16-21, and 87 as anticipated by Hendricks.

Claim 10

Claim 10 recites "wherein a subset of the available addressable units are selected by the user and a subset of the available avails are selected by the user, whereby the price-setting parameters are selected." Appellants argue that Hendricks does not enable the user to select a subset of the avails. App. Br. 15. Appellants maintain that "the act of an advertiser providing an

indication of the target group for an advertisement as taught in Hendricks is not the same as allowing a user to affirmatively select subsets of avails and subsets of addressable units." *Id.*

The Examiner responds by pointing to an embodiment in Appellants' Specification where the user may select a subset of avails corresponding to a particular geographic region or area. Ans. 9; *see* Spec. 18:28-21. The Examiner found "Hendricks, same as Appellant's method, selects avails by selecting a group with[in a] particular region or area." Ans. 9. Appellants do not contest the finding, but argue that the referenced Specification embodiment is irrelevant because claim 10 does not recite selecting avails by region or area. We are not persuaded by Appellants' argument. While the claim may not be limited to the situation where the selected subset of avails are those in a particular geographic region or area, the language of claim 10 is broad enough to cover that situation. Appellants have not persuaded us of error in the rejection of claim 10.

Claim 85

Claim 85 recites: "The method of claim 1, wherein a user selects at least one avail for purchase." Appellants' argument that "Hendricks simply does not allow a user to make an affirmative selection of avails" (App. Br. 15) is not persuasive. It is not clear what Appellants' mean by the use of the non-claim term "affirmative." Nonetheless, Hendricks' advertiser selects an avail for purchase via selection of the viewer target information. *See* Ans. 9-10 (citing Hendricks, col 30, l. 65 – col. 31, l. 6). We sustain the rejection of claim 85.

Claim 86

Appellants' argument that "claim 86 recites a process where a ***user*** selects the specific avail" (Reply Br. 5) is not commensurate with the language of the claim, and therefore is not persuasive of error. Claim 86 calls for "receiving a purchase request from a user for the purchase of said at least one avail," but does not require that the user identify the specific avail requested. We sustain the rejection of claim 86.

Claims 88-94, 96-98, and 100

Appellants argue claims 88-94, 96-98, and 100 as a group. App. Br. 17-18. We select claim 88 as the representative claim, and the remaining claims stand or fall with claim 88. 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' primary argument is that Hendricks does not disclose the recited step of "receiving a market segment selection from a user." Reply Br. 5-6; *see also* App. Br. 17. However, Appellants agree that "[t]he advertisers in Hendricks can . . . indicate the market segment to which their ad is oriented." App. Br. 17. It is not clear why one would not consider this to fall within the scope of "receiving a market segment selection" when that phrase is given its broadest reasonable construction. *Cf.* Ans. 10-11. Appellants' remaining arguments (regarding an avail inventory and generating a proposed price) have been addressed above in the context of claim 1. We sustain the rejection of claims 88-94, 96-98, and 100.

Claim 95

Appellants argue that Hendricks' advertisers are not able to select an avail for purchase. App. Br. 18-19. The Examiner persuasively reasons that

Hendricks' method is like Appellants' in that both involve selection of avails by selection of a market segment. Ans. 11. We are not persuaded by Appellants' argument that the Examiner has not shown where Hendricks allows the user to select a market segment. Reply Br. 6. The Examiner refers to Hendricks' Tables D-G (pertaining to, *inter alia*, Category/Group Definitions and Group Assignments) at columns 31-35 and to column 31, lines 1-6, which identifies certain information that an advertiser (user) provides. Ans. 5, 11. Appellants do not offer any cogent explanation as to why the Examiner's cited support fails to disclose a selection of market segment. Further, Appellants acknowledge that "[t]he advertisers in Hendricks can . . . indicate the market segment to which their ad is oriented." App. Br. 17. We sustain the rejection of claim 95.

Claim 99

We do not sustain the rejection of claim 99, which recites "wherein said proposed price is dependent on said market segment selection." *See* App. Br. 19; Reply Br. 6-7. While the price in Hendricks may be dependent upon market segment, the Examiner has not adequately explained how or where Hendricks discloses that this is necessarily so. *See* Ans. 11-12.

Claim 101-104

Claim 101 recites "receiving a programming selection from a user." Appellants appear to argue that in Hendricks the system, rather than the user, makes the programming selections. Reply Br. 7. We find this argument persuasive. The Examiner has not adequately explained how Hendricks discloses the recited "receiving" step. *See* Ans. 5-6, 12. As such, we cannot

sustain the rejection of independent claim 101 and its dependent claims 102-104.

Claim 105 and 107-112

Appellants argue claims 105 and 107-112 as a group. App. Br. 20. We select claim 105 as representative.

Claim 105 recites "receiving a correlation selection from a user, wherein said correlation selection indicates the preference of said user to be presented with avails that correspond to said correlation selection." Appellants argue that "Hendricks allows an advertiser to indicate targeting criteria for his advertisement, but not to indicate a correlation selection and be presented with corresponding avails (yet again noting that avails and advertisements are distinct)." App. Br. 20.

To the extent that Appellants argue that a user must be presented with avails, this is not commensurate with the language of claim 105. There is no "presenting" step in claim 105.

Appellants offer no cogent explanation as to why receiving targeting criteria from the user (or, as the Examiner found, receiving market segment selection from a user, Ans. 5, 13) does not constitute a "correlation selection" within the meaning of the claim. We sustain the rejection of claims 105 and 107-112.

Claim 106

We are not persuaded by Appellants' argument that, in Hendricks, "there is no mechanism for affirmatively purchasing an avail." App. Br. 20-21. The Examiner is correct that claim 106 does not recite or require a

specific "mechanism" for purchasing (Ans. 13), but recites that the "user may actuate the purchase of at least one avail." Also, the claim does not, as Appellants urge, require "giving the user an option to purchase the avail." Reply Br. 8. There is no "giving" step in the claim. Appellants do not persuade us that the Examiner erred, and we sustain the rejection of claim 106.

Claim 113

Claim 113 depends from claim 1 and adds the step of "allowing a user to select for purchase a subset of the avails …." Appellants' argument that this feature is missing is not persuasive. App. Br. 21. For the reasons given above regarding claim 10, we sustain the rejection of claim 113.

The rejection of claims 5, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Hendricks and Hunter

Appellants do not offer separate arguments regarding the obviousness rejection of claims 5, 14, and 15, but merely rely on their dependency from independent claim 1. App. Br. 21. As we sustain the rejection of claim 1, we also sustain the rejection of claims 5, 14, and 15.

DECISION

The decision of the Examiner to reject claims 99 and 101-104 is reversed. The decision of the Examiner to reject claims 1-21, 85-98, 100, and105-113 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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